

From: [Donna and Larry Charpied](#)
To: [SaltonSeaComments;](#)
CC: [Penny Newman;](#)
Subject: ATTN: Ms. Dale Hoffman-Floerke
Date: Monday, January 15, 2007 2:22:25 PM
Attachments: [Cover letter to Draft PEIR.doc](#)
[CCAIEJ,DPS,CCVSaltonS#12FD06.doc](#)

Dear Ms. Hoffman-Floerke,

Please find attached, comments to the Draft PEIR for the Salton Sea Restoration Plan submitted on behalf of the Center for Community Action & Environmental Justice, the Desert Protection Society, and the Citizens for the Chuckwalla Valley. Thank you for the opportunity to comment on this very important Plan. If you have any questions, please do not hesitate contacting me at the contact information below.

Sincerely,
Donna Charpied

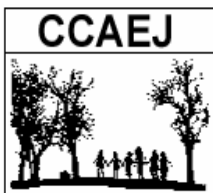
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Donna Charpied, Director
Desert Communities Protection Campaign
Center for Community Action and Environmental Justice
PO Box 397
Desert Center CA 92239
(760) 574-1887
www.ccae.org

"DON'T WASTE THE DESERT"

Support the Give It Back! Campaign

http://www.ccae.org/projects/desert_protection/action_feedback3.html



Center for Community Action and Environmental Justice

Centro para Acción de la Comunidad y la Justicia del Ambiental

Mailing Address:
PO Box 33124
Riverside, CA 92519

Phone: (951) 360-8451
Fax: (951) 360-5950
Email: admin@ccaej.org

Main Office Location:
7701 Mission Blvd.
Glen Avon, CA 92509

San Bernardino Office:
255 D Street, Suite 402
San Bernardino, CA 92410
(909) 381-8883

Desert Office:
PO Box 397
Desert Center, CA 92239
(760) 574-1887

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Policy Director
Jan Misquez

Desert Communities Protection Campaign

Campaign Director - Give It Back!
Donna Charpied

Westside Residents CAN

Teresa Lopez

Dale Hoffman-Floerke
Department of Water Resources
Colorado River and Salton Sea Office
P.O. Box 942836
Sacramento, CA 94236-0001

January 16, 2007

RE: Comments to Draft PEIR Salton Sea Restoration Plan

Dear Ms. Hoffman-Floerke,

Please find attached comments to the Draft PEIR for the Salton Sea Restoration Plan for the Center for Community Action and Environmental Justice (CCA EJ), the Citizens for the Chuckwalla Valley (CCV), and the Desert Protection Society (DPS).

CCA EJ is a non-profit corporation formed in 1993 as a resource and support center for communities working to better their social and natural environment. The mission of CCA EJ is to work with community groups in developing and sustaining democratically based participatory organizations that promote involvement of a diverse segment of the community in ways that empower people and create safer, healthier, toxic free places to live.

DPS is a is a non-profit California corporation that was incorporated in 1993 for the purpose of protecting and preserving the scenic, scientific, historical and recreational value of the California desert. The Society has its offices in Indio, California. DPS and its members use and enjoy federal lands throughout the California desert for a variety of outdoor pursuits.

Citizens for the Chuckwalla Valley is a grass-roots organization made up of residents of Riverside & San Bernardino Counties, dedicated to maintaining healthy desert communities and the integrity of Joshua Tree National Park.

We thank you for this opportunity to comment on the Draft PEIR.

Sincerely,

Donna Charpied, Director Desert Communities Protection Campaign

"bringing people together to improve our social and natural environment"

Dale Hoffman-Floerke
Department of Water Resources
Colorado River and Salton Sea Office
P.O. Box 942836
Sacramento, CA 94236-0001

Via E-Mail: SaltonSeaComments@water.ca.gov

January 16, 2007

RE: Comments to Draft PEIR Salton Sea Restoration Plan

Dear Ms. Hoffman-Floerke,

I am submitting these comments on behalf of the Center for Community Action and Environmental Justice (CCA EJ, a Salton Sea Coalition member), Citizens for the Chuckwalla Valley (CCV), and the Desert Protection Society (DPS). We do not support any one alternative under review, but believe a combination of the best ideas should be considered. We incorporate the comments submitted by the Salton Sea Coalition as though fully contained herein.

CCA EJ, DPS, and CCV along with literally tens of thousands environmentalists have been involved in a proposed dump that would have been built at Eagle Mountain (Eagle Mountain dump), located in eastern Riverside County, proposed by Kaiser Ventures and Mine Reclamation Corp (Kaiser/MRC). After two decades of public hearings, administrative appeals, and lawsuits, the Federal District Court in Riverside California ruled in favor of environmentalists on September 21, 2005. We write opposing the utilization of the defunct Eagle Mountain mine for a source of rock for barriers in various plans under consideration. We will outline our reasons below.

We believe the use of the proposed concentric rings as an alternative to rocks to form barriers would create less impacts to communities and the environment than mining rocks and transporting them through communities and sensitive lands.

Appendices H - 4, 6 & 7 discusses rock barrier construction, and utilizing the defunct mine at Eagle Mountain. As mentioned above, there is a court ruling in favor of environmentalists. The Court stated in part:

"...The subject land exchange and grant of rights of way and reversionary interests are set aside and **Defendants are enjoined from engaging in any action that would change the**

character and use of the exchanged properties pending BLM's preparation of an ROD consistent with the Court's rulings in this Order and an EIS which addresses the deficiencies in the subject Final EIS...". (Emphasis added).

Kaiser claims in the appendices that even if the court's orders are not overturned in the 9th Circuit Court of Appeals, they can still use the railroad right-of-way. This is not true. When the Bureau of Land Management approved the land

exchange and r-o-w's, the r-o-w's became Federal Land Policy Management Act (FLPMA) r-o-w's. The FLPMA land exchange and rights of way have been reversed by the Court, leaving the Congressionally approved r-o-w and land exchange, which in turn reverts the land & r-o-w back to the Federal government.

To clarify our position, we'll provide background on the Congressionally approved land and r-o-w grant. Congress authorized a patent to Kaiser Steel Corporation to operate a "camp site or mill site in connection with its mining operations" on a parcel of land owned by the United States by approving Private Law 790 (PL790), dated July 8, 1952. Kaiser's right to use the land was subject to the following reversionary provision:

"that said property *shall revert in fee to the United States in the event*

that said property is not used for a continuous period of seven years

as a camp site or mill site or for other incidental purposes in connection with the mining operations of said Kaiser Steel Corporation or its successors in interest. By the same Act of Congress, Kaiser obtained a right-of-way through public land for mining purposes, which was also subject to reversion if not used for seven years." *Id.* (Emphasis added).

Congress intended that the subject land would revert to public ownership if not used to further "the development of the Steel industry on the West Coast." (House Report No. 398 and Senate Report 1745 accompanying Private Law 790). Mining activities at the Kaiser Steel Co. mine at Eagle Mountain ceased in 1983, and subsequently neither the camp site lands nor the right-of way has been used for a "continuous period of seven years" in connection with mining operations. Kaiser seems to be purposefully misleading the State with false claims of ownership, win or loose in the 9th Circuit Court of Appeals. Additionally, Kaiser claims the mine is

active where actually Kaiser hasn't had mining permits since 1983.

Moreover, environmental and conservation groups seek the return of 29,775 acres of land in the Eagle Mountain Range to Joshua Tree National Park and the designation of the Kaiser Mine and Townsite as a National Historic Landmark. Utilizing Eagle Mountain as a source for rock will inhibit the reversion of the Eagle Mountain properties to their rightful owner, the federal government, and restrict re-unification of *all* of the lands originally contemplated to be part of Joshua Tree National Monument at its inception in 1936. As such, the rock from Eagle Mountain should be rejected. For more info on the Give It Back! Campaign, please see http://www.ccae.org/projects/desert_protection/action_alerts2.html.

From a community standpoint, the broken down railroad travels within 500 feet of the Eagle Mountain Elementary School. Smoke spewing diesel trains are an

unacceptable risk to children, as recent studies have shown.

Increased numbers of diesel trucks into our communities will bring deadly pollution. Based on the most recent scientific studies it is clear that exhaust from diesel trains, trucks, mine, and dump equipment are dangerous to our families, communities, and the desert environment.

Diesel Emissions and Health

- Diesel exhaust is a mixture of over **450 different toxic chemicals**,
40 of which are known to cause **cancer**.
- Diesel exhaust is classified as a **toxic substance** and listed as a known **cancer-causing agent** under Prop. 65 since 1990.
- Diesel exhaust contains benzene, arsenic, dioxins, and formaldehyde
also known to cause **cancer**, with toluene and dioxins causing **birth defects**.
- A recent study linked diesel to **reduced sperm** counts.
- Diesel exhaust is linked to increased hospital admissions for **asthma**,
pneumonia, respiratory diseases, chronic lung disease, heart disease and death.

Residents are extremely concerned with the diesel emissions that will be generated from mining and transporting rock next to

the school. Studies conducted by Dr. John Froines, UCLA professor of Toxicology and Occupational Hygiene, have determined that there is a strong risk of cancer from diesel emissions, showing a 40% risk of cancer along with 100 or more non-cancer effects. Particulate Matter ("PM") of less than 1 micron, or ultra fine particles from diesel, is an enormous exposure risk from 0 to 900 feet from the source. Diesel begins with d - i - e !

Utilizing the defunct Eagle Mountain mine for rock will have significant impacts on the environment. The 52 mile long railroad travels from Eagle Mountain hugging Joshua Tree National Park Wilderness, crosses under I-10 into the Chuckwalla Bench Area of Critical Environmental Concern, abuts the Orocopia Wilderness, travels through the Salt Creek/Dos Palmas Area of Critical Environmental Concern; on to Ferrum Junction. In the Eagle Mountain dump case, the Court writes with regards to the Big Horn Sheep, in part:

"...Defendants discuss the creation of a 'buffer zone' mitigation measure. However the EIS does not specify exactly what such 'buffer zone' entails, or even where it is to be located...Further, the Ninth Circuit has held that an EIS must address a project's impacts on wildlife and migration corridors. Because the use of tortoise-proof fencing may disrupt the Sheep's migration

pattern, Defendants are obligated under NEPA to address such disruption..."

One could easily extrapolate if Kaiser/MRC change mitigation to compensate lack of mitigation for the Big Horn Sheep, then the mitigation in place for the desert tortoise would need to be reevaluated.

Also, approximately 25 miles of the railroad lie inside the active Chocolate Mountains Aerial gunnery range. What happens to construction of the Sea's barriers when a bomb falls on the tracks? How long would the down time be? Kaiser does not have the workforce to repair the RR working on it 24 hours a day as they had in the 1970's. Along with errant bombs, flooding has wiped out the rail line on a number of occasions. As it is now. The reactivation of the RR will impact a number of



endangered and threatened species. For instance, the pupfish will undoubtedly become annihilated rebuilding the trestle at Salt Creek. The Yuma Clapper will be impacted as well as the Desert Tortoise and Big Horn Sheep as described earlier. Impacts to species at the Eagle Mountain would include, but not be limited to the leaf-nosed bat, Big Horn Sheep, Desert Tortoise, Peregrine falcon to name a few.

Further, Joshua Tree National Park surrounds the defunct Eagle Mountain mine on three sides like an amphitheater. The broken down railroad runs within virtual throwing distance to Joshua Tree National Park Wilderness. Significant impacts to Joshua Tree's resources will be created with the proposal to haul rock from Eagle Mountain to the Salton Sea.

First, the area in an around the site is made up of extremely valuable, and fragile, natural habitat and contains unique environmental resources. In 1976 Joshua Tree received federal Wilderness designation, in 1977 it received Class I Wilderness Airshed status, and in 1984 it was designated a World Biosphere Reserve. In 1994 Congress reaffirmed that Joshua Tree is "a public wildland resource of *extraordinary and inestimable value* for this and future generations," added 234,000 acres to the monument, designated an additional 163,000 acres as Wilderness and, specifically citing the need to protect the Park from "*incompatible development* and inconsistent management of ...contiguous Federal lands of essential and superlative natural, ecological, archeological, paleontological, cultural, historical, and wilderness values," affirmed Joshua Tree's status as a nationally significant area by designating it a National Park. 16 U.S.C.

Second, the creation of mining operations will cause multiple growth inducing impacts, including expansion of Eagle Mountain's population, traffic to and from the rural community, and potentially a revival of Eagle Mountain as a fully functioning, full service town. These growth-inducing impacts to the townsite and surrounding areas must be analyzed in an EIR. *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 159

Lastly, we believe that there is an egregious conflict of interest with the Salton Sea Authority pursuing rock from Eagle Mountain because the SSA's Executive Director, Rick Daniels was the President of MRC during and after the Eagle Mountain dump process. Kaiser/MRC have sold the Eagle Mountain dump to the Los Angeles

County Sanitation Districts for \$41 million dollars. The money has been placed in an escrow account, pending the outcome of litigation, then it would be divided between Kaiser and MRC if the legal issues are resolved. The broken down railroad's estimated costs to repair was \$1 million dollars per mile, and that was in 1992 dollars. We are extremely concerned that the SSA will finesse Salton Sea Restorations funds to repair the railroad for rock hauling, thereby paving the way for the garbage dump, and fulfilling due diligence with the railroad. If that happens, taxpayers will effectively be the bank for Kaiser/MRC's dreams of wealth at the public's expense.

In closing, we strongly encourage the use of concentric rings for the Sea barriers, and discontinue examining Eagle Mountain & Coolidge for a source of rock. Thank you for the opportunity to comment on this Draft PEIR.

Respectfully Submitted,

/s/

Donna Charpied, Director
Desert Communities Protection Campaign
CCA EJ

Cc:

Desert Protection Society
Citizens for the Chuckwalla Valley
Interested Parties

